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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA

9
10 AARON STEWARD,
11 Plaintiff,
12 v.
13 COUNTY OF SANTA CLARA, *et al.*,
14 Defendants.

Case No. [18-cv-04119-SI](#)

**ORDER DIRECTING
SUPPLEMENTAL BRIEFING –
DUE BY 3PM ON FEBRUARY 28, 2020**

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16 Defendants' motion for summary judgment is scheduled for a hearing on March 6, 2020.
17 Defendants' motion contends, *inter alia*, that plaintiff's federal and state law claims against
18 defendant Graham¹ should be dismissed for failure to exhaust administrative remedies. Specifically,
19 defendants argue that the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), requires that a
20 prisoner exhaust available administrative remedies prior to filing suit in federal court, and
21 defendants have submitted evidence showing that plaintiff did not file a grievance regarding the
22 "rough ride" against defendant Graham. *See* Duran Decl. ¶¶ 8-9, Ex. 2. Plaintiff's opposition does
23 not specifically address defendants' administrative exhaustion requirement.

24 The PLRA provides that "[n]o action shall be brought with respect to prison conditions under
25 section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or

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27 ¹ Plaintiff brings three causes of action against defendant Graham arising out of the alleged
28 "rough ride": a claim under 42 U.S.C. § 1983 for violation of his Fourteenth Amendment rights; a
claim under the California Bane Act, Cal. Civ. Code section 52.1; and a claim for intentional
infliction of emotional distress.

1 other correctional facility until such administrative remedies as are available are exhausted.” 42
2 U.S.C. § 1997e(a) (emphasis added). The PLRA exhaustion requirement does not apply to state law
3 claims.

4 However, based upon the Court’s research, there is a separate exhaustion requirement for
5 state law claims pursuant to California law. The California Tort Claims Act, *see* Cal. Gov’t Code
6 §§ 810, *et seq.* – commonly referred to as the California Government Claims Act by the courts, *see*
7 *City of Stockton v. Sup. Ct.*, 42 Cal. 4th 730, 741-42 (Cal. 2007) – requires a person to present his
8 claim to the California Victim Compensation and Government Claims Board (“Board”) before he
9 may file an action for damages against a California governmental entity or employee “for death or
10 for injury to person or to personal property.” Cal. Gov’t Code § 911.2; *see* Cal. Gov’t Code §§ 905.2,
11 911.2, 945.4, 950.2. The Government Claims Act has strict time limits for filing such a claim with
12 the Board and for filing an action in court after the rejection of such a claim. A claimant must
13 present his claim to the Board within six months of the accrual of the cause of action. *See* Cal. Gov’t
14 Code § 911.2. Additionally, an action against a governmental entity or employee covered by the
15 claims-presentation requirement must be filed within six months following written notice of
16 rejection of the claim by the Board. *See* Cal. Gov’t Code § 945.6(a)(1). Timely claim presentation
17 is “a condition precedent to plaintiff’s maintaining an action against [a state employee or entity]
18 defendant.” *California v. Superior Court (Bodde)*, 32 Cal. 4th 1234, 1240 (Cal. 2004); *see also*
19 *Harris v. Escamilla*, 736 F. App’x 618, 621-22 (9th Cir. May 24, 2018) (applying Government
20 Claims Act requirements to Bane Act claim); *Miller v. Adonis*, Case No. 1:12-cv-00353-DAD-EPG-
21 PC, 2019 WL 4076441, at *18 (E.D. Cal. Aug. 29, 2019) (granting summary judgment on Bane Act
22 claim based on prisoner plaintiff’s failure to comply with Government Claims Act); *see also*
23 *Huapaya v. Davey*, Case No. 1:17-cv-01441-DAD-SAB (PC), 2019 WL 4033964, at *4-8 (E.D.
24 Cal. Aug. 27, 2019) (addressing and distinguishing between administrative exhaustion under PLRA
25 and compliance with Government Claims Act for state law claims).

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1 The Court directs the parties to file supplemental briefs and any supporting evidence
2 regarding whether plaintiff complied with the California Government Claims Act with regard to his
3 state law claims against defendant Graham. The briefs shall be filed by **3 p.m. on Friday, February**
4 **28, 2020.**

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6 **IT IS SO ORDERED.**

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8 Dated: February 25, 2020



9 SUSAN ILLSTON
10 United States District Judge